

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-001485-ME

STEVEN PAUL HILL

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE JERRY J. BOWLES, JUDGE  
ACTION NO. 07-D-501949-001

REBECCA PETERSON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

LAMBERT: Steven Paul Hill appeals from the entry of a domestic violence order against him in Jefferson Circuit Court. For the reasons set forth herein, we affirm.

Rebecca Peterson and Hill have a two year old child but are not married and have never lived together. Peterson alleges that on July 11, 2007, Hill came to her home to deliver a child support check when she informed him that she was

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<sup>1</sup> Senior Judge William L. Knopf, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5) (b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

pregnant with his child again. Upon hearing the news, Hill pulled out a gun and placed the barrel in Peterson's mouth, threatening to kill her unless she agreed to have an abortion. Hill denied these allegations as well as additional allegations of prior acts of abuse against Peterson.

On July 6, 2006, the court held an evidentiary hearing based on Peterson's allegations that Hill engaged in acts of domestic violence against her on July 11, 2007 and prior occasions. The trial court weighed the credibility of the witnesses and determined that it was established by a preponderance of the evidence that acts of domestic violence had occurred and may again occur. Accordingly, the court entered an order, effective for three years, restraining Hill from any contact or communication with Peterson, compelling him to remain at least 1,000 feet from her and members of her family, and ordering him to participate in counseling services. This appeal followed.

Hill argues that the trial court improperly found that domestic abuse was established by a preponderance of the evidence. We disagree.

In reviewing a determination of domestic abuse by a trial court, we review the trial court's finding for clear error only. See CR 52.01 and *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). KRS 403.750(1) discusses court determinations of whether domestic violence has occurred in the context of a petition for an emergency protective order under KRS 403.740. The court in

such a proceeding is authorized to act if, following a hearing, "it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred. . . ." KRS 403.750(1). The preponderance of the evidence standard "merely requires that the evidence believed by the fact-finder be sufficient that the defendant was more likely than not to have been a victim of domestic violence." *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). Furthermore, "[i]t has long been held that the trier of fact has the right to believe the evidence presented by one litigant in preference to another." See *Id.*, citing *King v. McMillan*, 169 S.W.2d 10 (Ky. 1943). The trier of fact may believe any witness in whole or in part. *Webb Transfer Lines, Inc. v. Taylor*, 439 S.W.2d 88, 95 (Ky. 1968). The trier of fact may also take into consideration all the circumstances of the case, including the credibility of the witness. *Hayes v. Hayes*, 357 S.W.2d 863, 866 (Ky. 1962). Having weighed the evidence in this case, the trial court concluded that Hill established that she was a victim of domestic violence. The trial court's factual finding was correctly based upon a preponderance of evidence standard, and the ruling was not clearly erroneous.

Accordingly, we affirm the order of the Jefferson Circuit Court.

VANMETER, JUDGE, CONCURS.

KNOPF, SENIOR JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Sammy Deeb  
Louisville, Kentucky